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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1899

ROBERT NEIL MARTAIN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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The petitioner, Robert Neil Martain, respectfully prays that a writ of certiorari issue to review the judgment and decision of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on May 21, 1974.

OPINION BELOW.

The decision and opinion of the Court of Appeals, not yet reported, appears as Exhibit A attached hereto.

JURISDICTION.

The judgment of the Court of Appeals for the Seventh Circuit was entered on May 21, 1974. This petition for

Certiorari is filed within thirty days of that date. This Court's jurisdiction is invoked under 28 U. S. C. Sec. 1254(1).

QUESTIONS PRESENTED.

1. Whether under an indictment containing eight counts charging the issuance of forged securities in interstate commerce, one count on its face does not involve interstate commerce, but proof at the trial showing intrastate commerce was admitted and was the only direct evidence connecting the petitioner with the issuance of the other seven checks. The petitioner's rights to a fair trial were violated thereby.

2. Where the petitioner on the other seven counts was convicted without any personal identification or proof that he presented the forged securities or mailed the same, can he be convicted of issuing a security in interstate commerce?

3. The Court of Appeals wholly failed to pass upon the petitioner's contention that the indictment and the counts thereunder failed to charge an offense in interstate commerce. The petitioner was therefore deprived of his rights to an appeal.

STATEMENT OF THE CASE.

The petitioner is charged in an eight-count indictment with knowingly transporting in interstate commerce forged securities in violation of 18 USC Section 2314. After a jury trial, defendant was convicted on all eight counts. Judge Bauer imposed concurrent four year terms of incarceration upon each count.

Evidence received at the trial is offered to show that, on eight separate occasions, defendant, through the use of various aliases, executed bogus checks to the airlines in return for passenger tickets. Fingerprint experts testifying at trial found defendant's fingerprints present on seven of the eight checks listed in the indictment; and a handwriting analyst linked defendant to the eighth check.

Evidence was offered that from January 10 to January 13, 1971 petitioner obtained airline tickets in several different states by executing five checks drawn on the Drexel National Bank, Chicago, Illinois. Each of the checks were payable to Trans-World Airline, signed by one Robert C. Hall. None of the checks were ever paid because the account upon which they were drawn had been closed prior to the time of their presentation.

Evidence was offered that checks of $462 and $308 were drawn on the Drexel National Bank, Chicago, Illinois. These checks, were payable to United Airlines, Detroit, Michigan and signed by the name Steve Adams as drawer. Finally, on March 19, 1972, a check for $154 was drawn on the Drexel National Bank, Chicago, Illinois, and payable to American Airlines, Los Angeles, California. The name Kenneth B. Evans, Jr. was signed as the drawer. Again these checks were never paid because they were drawn on accounts that had been closed.

On May 4, 1972, petitioner presented a $316 check at the American Airlines ticket counter in Chicago, drawn on a Chicago bank for the purchase of a round-trip ticket to Los Angeles. The check was signed Kenneth B. Evans. After the agent at the ticket counter accepted the check, he compared the name appearing on the check with a list maintained by the airlines which contained the names of persons who had previously defaulted on checks. Upon discovering that the same Kenneth Evans appeared on the list, he called for his supervisor, Mr. James M. Roudabush. Roudabush, after momentarily observing defendant, realized that he had previously approved a bogus check for petitioner on a prior occasion. In that instance, petitioner had allegedly presented a check bearing the name Steve Adams. Roudabush, upon recognizing petitioner, immediately summoned the police.

There was no direct proof or evidence that the party presenting the checks in Detroit or in Los Angeles was the petitioner

or the petitioner's agent. There was no proof of any interstate sale of a ticket. The ticket attempted to be secured in Detroit and in Los Angeles did not constitute a sale in interstate commerce, in any event.

There had to be proof that the petitioner sent an agent to purchase the ticket in Chicago with instructions to mail the check to Detroit or Los Angeles to secure the ticket.

There was no such contention made by the government and no such evidence introduced. The only evidence presented was that a check drawn on a Chicago bank was presented by someone in Detroit or in Los Angeles.

Again, there was no identification that the petitioner caused such check to be presented in any place other than in the City of Chicago.

REASONS FOR GRANTING THE WRIT.

1. The Court permitted the petitioner to be convicted on eight counts of the indictment. The only proof that he personally caused a forged security to be issued in commerce was evidence improperly received, connected with the presentation of one check drawn on a Chicago bank, presented to an airline in Chicago and never mailed or transmitted in interstate commerce. There was no direct evidence whatsoever that connected Martain with the other checks.

2. The evidence of the check presented at Chicago conclusively showed that the petitioner presented the check drawn on a Chicago bank and that no interstate commerce whatsoever was involved. The testimony showed that the American Airline security officer identified the petitioner as having previously attempted to purchase tickets, and that testimony was offered to prove the Chicago transaction obviously prejudiced the jury in arriving at their verdict that the petitioner issued the checks charged in the seven other counts.

In the absence of any witness testifying that this petitioner presented the checks set forth in the seven other counts, the petitioner's rights to a fair trial and due process of law under the Fifth Amendment of the United States Constitution was flagrantly violated.

CONCLUSION.

A writ of certiorari should issue to review the judgment and opinion of the Seventh Circuit.

Respectfully submitted,

SAMUEL E. HIRSCH,
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400 East Randolph Street,
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EXHIBIT A.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

May 21, 1974.

Before

HON. THOMAS E. FAIRCHILD, *Circuit Judge*
HON. JOHN PAUL STEVENS, *Circuit Judge*
HON. DON H. LARAMORE, *Assoc. Justice*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 74-1119 *vs.*

ROBERT N. MARTAIN,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

(73 CR 418)

Oral argument of counsel in the above entitled appeal having been heard this date before the division of the court above named, and the court having determined, adversely to the contentions advanced by appellant, that: (1) there was sufficient evidence to support the verdict of guilty, and (2) there was no reversible error in the admission of evidence, and having announced from the bench the decision to affirm the judgment appealed from,

IT IS ORDERED that judgment be entered, affirming the judgment appealed from.

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1899

ROBERT NEIL MARTAIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted on eight counts of causing the interstate transportation of forged and fraudulent checks, in violation of 18 U.S.C. 2314. He was sentenced to concurrent terms of eight years' imprisonment. The court of appeals affirmed from the bench (Pet. App. A1).

Petitioner contends that it was improper to introduce evidence of an intra-state use of a forged check as part of the proof of the interstate crimes, and that the proof of the crimes was insufficient. These contentions are without merit. The evidence of which he complains showed his effort on May 4, 1972 to purchase an airline ticket in Chicago by presenting a forged check for $316 drawn on a Chicago bank (see Pet. 3). This incident led to his arrest and the development of the case against

him, but it was not, contrary to petitioner's suggestion (Pet. 2), the basis of any of the eight counts of the indictment; each of those counts was based on his purchase of airline tickets, in states other than Illinois, by presenting forged and fraudulent checks drawn on the Chicago bank. His connection with these checks was established by fingerprint and handwriting analysis evidence (see Pet. 2). Testimony concerning the attempted Chicago purchase was properly admitted under the "similar acts" doctrine to show a common plan, scheme or course of conduct. *United States* v. *Stevens*, 452 F. 2d 633, 635 (C.A. 10); *United States* v. *Hutul*, 416 F. 2d 607, 624 (C.A. 7), certiorari denied, 396 U.S. 1012; *United States* v. *Johnson*, 382 F. 2d 280, 281 (C.A. 2); see also *Lisenba* v. *California*, 314 U.S. 219, 227.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1974.